

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

JAN 10 2014

WHEELER ZAMICHELLI :

Plaintiff :

MICHAEL WUNZ, Clerk
By _____ Dep. Clerk

VS. :

CIVIL ACTION

NO. 12-cv-3200-GMS

WILLIAM ANDREWS, ET AL., :

Defendants, :

PLAINTIFF'S THIRD AMENDED COMPLAINT

Introduction

1. This action for money damages is brought pursuant to the Fourth, Fifth, and Fourteenth Amendment to the United States Constitution, incorporated with Pennsylvania Common Law, and Title 42 U.S.C. § 1983, 1985, 1986, 1988, as well as, Bivens vs. Six Unknown Named Agents Of The Federal Bureau Of Narcotics, 402 U.S. 388, 91 S. Ct. 199, 29 L.ed.2d 619 (1971). Jurisdiction is based upon 28 U.S.C. § 1331, 1343, 1346(b) and supplemental jurisdiction of the court under 28 U.S.C. § 1367 (a) for claims arising under state law. Venue is in the Eastern

District of Pennsylvania, pursuant to 28 U.S.C. § 1391, for it is where the events giving rise to this claim occurred.

Parties

2. The following person is the plaintiff in this action:
 - a. Wheeler Zamichieli, Inst#67271-066, detained at The Federal Detention Center of Philadelphia, 700 Arch Street, Phila, PA. 19105

3. The following persons are defendants in this action:
 - a. William Andrews, an officer with the Philadelphia Police Department. For purpose of this litigation, defendant's address is 1515 Arch Street, Civil Rights Law Dept., Phila, PA. 19102-1595. At all times material to this complaint, Andrews was on duty as a Police Officer. He is being sued in his official and individual capacity.

 - b. Melvin Victor, an officer with the Philadelphia Police Department. For purpose of this litigation, defendant's address is 1515 Arch Street, Civil Rights Law Dept., Phila, PA. 19102-1595. At all times material to this complaint, Victor was on duty as a Police Officer. He is being sued in his official and individual capacity.

c. Ronald Dove, Homicide Detective with the Philadelphia Police Department. For purpose of this litigation, defendant's address is 1515 Arch Street, Civil Rights Law Dept., Phila, PA. 19102-1595. At all times material to this complaint, Dove was on duty as a Homicide Detective. He is being sued in his official and individual capacity.

d. The City of Philadelphia, an incorporated municipality organized by and through the Commonwealth of Pennsylvania. For purpose of this litigation, The City's address is 1515 Arch Street, Civil Rights Law Dept., Phila, PA. 19102-1595. The City of Philadelphia is being sued as a Municipality.

e. Patrick Henning, an U.S. ATF Agent with the Dept., of Justice. For purpose of this litigation, defendant's address is 950 Pennsylvania Avenue NW, Washington, DC 20530. At all times material to this complaint, Henning was on duty as an ATF Agent. He is being sued in his individual capacity.

f. Zane David Memeger, U.S. Attorney with the Dept., of Justice. For purpose of this litigation, defendant's address is 950 Pennsylvania NW, Washington, DC 20530. At all times material to this complaint, Memeger was on duty as the U.S. Attorney. He is being sued in his individual capacity.

- g. Virginia Paige Pratter, Assistant U.S. Attorney with the Dept., of Justice. For purpose of this litigation, defendant's address is 950 Pennsylvania Avenue NW, Washington, DC 20530. At all times material to this complaint, Pratter was on duty as the AUSA. She is being sued in her individual capacity.
4. At all times material to this complaint, defendants, Dove, Andrews, Victor, and The City of Philadelphia were acting under color of state law, to wit, the statutes, ordinances, regulations, policies, customs, training, and usages of the Commonwealth of Pennsylvania, and county of Philadelphia.
5. At all times material to this complaint, defendants, Memeger, Pratter, and Henning were acting under color of law, while performing duties on behalf of the United States of America.

Facts

6. On 2/20/11 at 2:27am, defendants, William Andrews and Melvin Victor were surveying the area after a founded shooting at 2nd and Linton Street, when they stop the Plaintiff's vehicle at Beechwood and Church Lane, with their weapons drawned on Plaintiff.

7. Defendant Victor approaches the driver side of Plaintiff's vehicle, as Defendant Andrews on the passenger side some feet behind for safety procedures. Andrews opens the passenger side door and without probable cause, conducts a warrantless search, as Victor removes Plaintiff from the vehicle. Subsequent to the search, Andrews recovers a firearm from under the front passenger seat of the vehicle.
8. Plaintiff was arrested and transported from the traffic stop location, to the Police Headquarters at 8th and Race Streets, and detained for over 10 hours in the Homicide Unit, without probable cause. Following said detention, Plaintiff was transferred into the general Intake Unit, and processed for the firearms violation.
9. Defendant Victor testified in the U.S. District Court that, " this was a normal traffic stop and they were no longer searching for suspects in the shootings at that time " Id. at 30, 53-54 Suppression Hearing. See Exhibit A, Court Opinion, page 1. Plaintiff argues that, he was illegally searched and arrested, as a result of being profiled for the shootings at 2nd and Linton Street, which lead to his detention in the Homicide Unit.

11. Defendant Andrews who conducted the warrentless search and made the challenging arrest did not prepare or file any Police Reports regarding Plaintiif's arrest, nor did Defendant Victor.
12. Homicide Detective Ronald Dove prepared and filed the Philadelphia Police Department Arrest Report of Plaintiff, after allegedly interviewing Defendant Victor who stated that, "upon approaching the vehicle, the operator turned on his interior lights, and P/O Andrews observed a gun on the passenger side and immediately alerted his partner. The operator was removed from the vehicle, and a 38 caliber Rossi revolver was recovered ". See Exhibit B, Arrest Report.
13. Defendant Dove did not interview Andrews in regards to where he seen the firearm in plain-view, in justifying the exception to the warrent requirement. In the District Court, Victor testified that, "he never seen where Andrews found the gun" Id. at 57-58, page 2 of Court Opinion. Plaintiff argues that, his 4th Amendment Rights were clearly established, and there was a realistic and reasonable opportunity for Dove to intervene by interviewing Andrews, and preparing a Report on his account and not Victor's.
14. At the preliminary hearing in the Municipal Court of Phila., Defendant Dove or Victor did not appear to testify of the

arrest of Plaintiff. Defendant Andrews was questioned by Plaintiff's attorney who asked Andrews, "did you prepare a report in this case", but the prosecutor objected, and the court sustained the objection. See Exhibit C, 4/26/11 Transcripts, Id. at page 14 paragraph 24. Plaintiff argues that, there was every reason for Dove and Victor to testify, because Andrews didnt prepared the report.

15. Further into the preliminary hearing, Andrews gave different accounts to where he seen the firearm in plain-view (1) "I recovered a .38 revolver from the front seat of defendant's vehicle", (Id. at page 5 paragraph 16-17) (2) "Upon me approaching on the passenger side, I observed in plain-view a 38 revolver [u]nder the passenger seat", (Id. at page 9 paragraph 9-11) and (3) "It was [o]n the passenger seat sir", (Id. at page 9 paragraph 19-21). See Exhibit C.
16. Lastly, Andrews testified that, "I cannot tell you whether the windows were up or down, but it was right there in the front seat and the doors was closed", (Id. at page 14 paragraph 19-22. See Exhibit C.
17. Defendants, Victor, Dove, and Andrews combined together, in violation of Plaintiff's 4th and 14th Amendments Rights of the U.S. Constitution, and conspired to the fabrication of a story of the firearm being in plain-view, in an attempt to justify the illegal

search and arrest of Plaintiff. Defendants falsified arrest reports, falsely arrested/imprisoned Plaintiff without probable cause, and maliciously prosecuted him.

18. The City of Philadelphia is liable as a Municipality, due to it's deficient Stop & Frisk Policy. The Defendant violated Plaintiff's Constitutional Rights by failing to properly train and/or supervise it's officers/employees in proper procedures for arresting suspects and charging them with crimes. The Defendant's policies and customs with regard to the training and supervision of its officers on these issues, led to the violation of Plaintiff's Rights.
19. After Plaintiff's arrest on 2/20/11, Federal Defendant, Patrick Henning, easrly as 2/28/11 pursued an investigation of Plaintiff, before a prima facie case could be established, See Exhibit D, ATF Investigation Report. Defendant also investigated Plaintiff's prior criminal history on 3/31/11, See Exhibit E, ATF Investigation Report. Plaintiff argues that, Defendant was pursuing a malicious prosecution of Plaintiff, and other than for a purpose of bringing him to justice.
20. Even after Defendant Andrews contradicting accounts of the firearm in plain-view, at the preliminary hearing on 4/26/11, Defendant Zane David Memeger on 7/12/11 without probable cause,

launched a malicious prosecution of Plaintiff, adopting the state arrest. Defendant knew that Plaintiff's 4th Amendment Rights were clearly established, and through his investigations knew/or should have known that, those rights were violated by Defendants, Andrews, Victor, and Dove.

21. A Criminal Complaint and Arrest Warrent/Affidavit was prepared by Defendant Henning, and on 7/13/11, Henning executed an arrest warrent outside of the Criminal Justice Center of Philadelphia, taking Plaintiff into custody.
22. After Henning falsely arrested/imprisoned Plaintiff without probable cause, and maliciously prosecuted him in violation of his U.S. Constitutional Rights, Henning furthered his investigation. He searched the area of Broad and Erie Streets on 7/13/11, until he found Plaintiff's vehicle located on the 3700 block of Carlise Street. Defendant Henning took photographs of Plaintiff's vehicle, which is in fact, the same vehicle Plaintiff was arrested in, on 2/20/11. See Exhibit F, 1/30/13 Transcripts, page 51, under Indictment No. 12-182.
23. The photographs taken by Defendant Henning, displays very dark tinted windows, which prohibited Defendant Andrews from seeing inside of the Plaintiff's vehicle on the night of his arrest. Defendant Pratter with-held evidence of the photograph, but disclosed it later, in subsequent Indictment No. 12-182. See Governments Exhibit 2b, Newly Discovered Evidence, Exhibit G.

24. As a result of the Governments adoption of the state arrest by Federal Defendants, an Indictment was filed against the Plaintiff, on 7/19/11, under Case No. 11-393. Plaintiff appeared before a U.S. Magistrate Judge, and Defendant Virginia Paige Pratter argued against Plaintiff's Rights to bail. Plaintiff was denied bail, and held in un-lawful pre-trial detention at the Federal Detention Center of Philadelphia, between 7/13/11-12/18/11.
25. Defendant Pratter continued in a malicious prosecution of Plaintiff, in violation of his U.S. Constitutional Rights. Defendant through her investigation of the photograph, preliminary hearing transcripts, and arrest report prepared by Dove, knew/or should have known that Andrews and Victor did not have the requisite probable cause to conduct a warrantless search, and violated Plaintiff's clearly established rights. Defendant caused Plaintiff to suffer loss/injury.
26. On 11/21/11, Plaintiff appeared before U.S. District Judge, Berle M. Schiller, in a Motion to Suppress Evidence, under Indictment No. 11-393, resulting from the state arrest. At the hearing, Andrews testified that, "he seen the firearm in plain-view on the passenger seat". Plaintiff's attorney entered into evidence the preliminary hearing transcript, showing that Andrwes testified that, " I observed in plain-view a 38 revolver [u]nder the passenger seat.

27. Defendant Andrews testified that, "he seen the firearm through a closed door", so Plaintiff's attorney entered into evidence a photograph of Plaintiff standing next to his vehicle during the day, before his arrest. The photograph displaying dark tinted windows, making it impossible for Defendant Andrews to have seen the firearm inside of the vehicle in the dark of the night, Id. at page 63, of Exhibit A, page 2.
28. Defendant Victor was called to testified at the hearing, and stated, "as he approached the vehicle during the traffic stop, plaintiff turned on his interior lights, and asked, why was he pulled over". Victor testified that, "he did not asked plaintiff for his license, registration, and insurance while he was in the car" and lastly, "nor did he see where Andrews recovered the gun", Id. at pages 57-60. See Exhibit A. page 2.
29. Ultimately, Judge Schiller found Andrews and Victor's testimony implausible, and ruled in his 12/9/11 Opinion that, Andrews and Victor violated Plaintiff's Fourth Amendment Rights of the U.S. Constitution. See United States v. Wheeler Zamicheli, 2011 U.S. Dist. Lexis 141610 (Dec. 2010). Exhibit A.
30. On 12/13/11, Indictment No. 11-393 was terminated in Plaintiff's favor, and ~~he was released from federal custody on~~ 12/18/11, after having spent 158 days at FDC Philadelphia.

31. As a direct and proximate result of the intentional, reckless and/or negligence actions and omission of all the defendants set forth in this complaint, Plaintiff was deprived of his liberty, and without procedural and substantive Due Process of law, forced Plaintiff to endure immeasurable physical, emotional and mental pain. Sufferrings of great distress, seperation from society, seperation from elderly Mother (her care-taker), loss of parental consortium, loss of companionship, loss of work/wages, loss of vehicle, and was required to expend monies defending the illegal arrest.

Legal Claim

COUNT I

**42 U.S.C. § 1983 cause of action
against William Andrews, Melvin Victor, and Ronald Dove
4th Amendment**

32. Paragraph 1 through 31 incorporated herein by reference as though fully set forth.

At all times material to this complaint, Defendant Andrews, Victor, and Dove, while acting under color of state law, deprived Plaintiff of his 4th Amendment Rights of the U.S. Constitution, to be free from illegal searches and seizures, which caused Plaintiff to suffer loo and injury. The charges against Plaintiff, was terminated in his favor on 12/09/11, by U.S. Dis-

strict Judge Berle M. Schiller, finalizing the 4th Amendment violation committed by Defendants.

Plaintiff asserts his Rights against Defendants Victor, Dove, and Andrews, barring them from re-litigation of this Fourth Amendment Claim in this action, pursuant to The Doctrine Of Collateral Estoppel. Plaintiff is entitled to recover a monetary award for compensatory, and punitive damages, under 42 U.S.C. § 1983, as well as attorney's fees, under 42 U.S.C. § 1988, against Defendants.

COUNT II

42 U.S.C. § 1983 cause of action
against The City of Philadelphia
Municipal Liability

33. Paragraph 1 through 31 are incorporated, by reference set forth.

33. At all times material to this complaint, the City of Philadelphia, while acting under color of state law, violated the Plaintiff's 4th & 14th Amendment Rights secure by the U.S. Constitution, incorporated by Pennsylvania Common Law, by its employees/officers, Andrews, Victor, and Dove. The City is liable, through it's final policy making authoriting, and institution of the Stop & Frisk Policy, and procedures. The City knew about the need for training regarding proper procedures for arresting suspects and charging them with crimes. The City was responsible for acquiesced, and/or deliberate indifference through policy, custom, and/or procedure of failing to:

- (a) properly and adequately train, test, and instruct Andrews, Victor, and Dove on proper procedures for

SEARCHING

arresting suspects and charging them with crimes:

(b) Properly supervise and/or control its officers/employees:

(c) develop, implement, carry out, and maintain proper personnel training, policies, practices, customs, and/or procedures necessary to prevent the charging of suspects with crimes for which the officers do not have probable cause.

The City of Philadelphia directed and/or knew of an acquiesced in Andrews, Victor and Dove's wrongful conduct. Defendants acts omission while performing duties on behalf of the City of Philadelphia, caused Plaintiff to suffer loss and injury. The City was the proximate cause for the violations by Defendants, and is liable, entitling Plaintiff a monetary award of compensatory, and punitive damages, under 42 U.S.C. § 1983, and recover attorney's fees under 42 U.S.C. § 1988.

COUNT III

Common Law Malicious Prosecution

against William Andrews, Melvin Victor

Ronald Dove, incorporated to the 4th amendment

34. Paragraph 1 through 31 are incorporated herein by reference as though fully set forth.

At all times material to this complaint, Defendant William Andrews, Melvin Victor, and Ronald Dove, while acting under color of state law, deprived Plaintiff of his 4th and 14th Amendment Rights of the U.S. Constitution, to be free from

illegal seizures/unlawful pre-trial detention without probable cause, and malicious prosecution, incorporated by Pa. Common Law. The defendants caused Plaintiff to suffer loss and injury, and they are liable for damages from the institution of criminal proceedings against Plaintiff with malice and without probable cause. Said proceedings against Plaintiff was terminated in his favor, which entitles him to compensatory, punitive damages, as well as attorneys fee's, under 42 U.S.C. § 1983, 1988.

COUNT IV

Common Law Conspiracy claim
against William Andrews Melvin Victor
and Ronald Dove

35. Paragraph 1 through 31 incorporated herein by reference as though fully set forth.

At all times material to this complaint, William Andrews, Melvin Victor, and Ronald Dove, while acting under color of state law, deprived Plaintiff of his U.S. Constitutional Rights to Due Process under the 14th Amendment, incorporated by Pennsylvania Common Law, which caused Plaintiff to suffer loss and injury. The Defendants are liable for Plaintiff's injuries, resulting from the fact that, they combined and conspired together, to employ illegal means for an illegal purpose wrongfully imprisoning Plaintiff. The charges against Plaintiff were terminated in his favor, which entitles him to compensatory and punitive damages, as well as recovery of

attorney's fees, under 42 U.S.C. § 1983, 1985-86, 1988.

COUNT V

Common Law claim against
William Andrews Melvin Victor Ronald Dove
False arrest and False imprisonment

36. Paragraph 1 through 31 are incorporated herein by reference as though fully set forth.

At all times material to this complaint, William Andrews, Melvin Victor, and Ronald Dove, while acting under color of state law, deprived Plaintiff of 14th Amendment Rights of the U.S. Constitution, incorporated by Pennsylvania Common Law, causing Plaintiff to suffer loss and injury. The Defendants deprived Plaintiff of his liberty and Equal Protection Rights, without procedural and substantive Due Process of Law. The Defendants are liable for damages, as a result of their intentional and unjustified arrest/confinement of Plaintiff. The charges against Plaintiff were terminated in his favor, which he now is entitled to compensatory and punitive damages, as well as attorney's fees, under 42 § 1983 and 1988.

COUNT VI

Bivens cause of action against
Zane David Memeger, Virginia Paige Pratter
and Patrick Henning, 4TH Amendment Claim

37. Paragraph 1 through 31 are incorporated herein by reference as though fully set forth.

At all times material to this complaint, Defendants, Zane David Memeger, Virginia Paige Pratter, and Patrick Henning, while acting under color of law, deprived Plaintiff of his 4th Amendment Rights of the U.S. Constitution, to be free from illegal seizures/unlawful pre-trial detentions, without probable cause and malicious prosecution. The Defendants caused Plaintiff to suffer loss and injury, as a result of unlawful pre-trial detention for 158 days in federal custody. The Defendants are liable for damages, from their institution of criminal proceedings against Plaintiff without probable, and with malice. Said proceedings against Plaintiff were terminated in his favor, which entitles him to compensatory, punitive damages, and attorney's fees, under Bivens and 42 U.S.C. § 1988.

COUNT VII

Bivens cause of action
against Zane David Memeger, Virginia Paige Pratter
and Patrick Henning, 5th Amendment Claim

37. Paragraph 1 through 31 are incorporated herein by reference as though fully set forth.

At all times material to this complaint, Defendants, Zane David Memeger, Virginia Paige Pratter, and Patrick Henning

while acting of color of law, deprived Plaintiff of his 5th Amendment Right of the U.S. States Constitution, to Equal Protection and Due Process of law, which caused the Plaintiff to suffer loss and injury. Plaintiff was deprived of his liberty, without procedural and substantial Due Process. The Federal Defendants are liable for damages, as a result of their intentional and unjustified arrest/confinement of Plaintiff. The charges for which Plaintiff Rights were violated by Defendant, have been terminated in his favor, which now entitles Plaintiff to recover compensatory and punitive damages, for their negligence, as well as attorney's fees, under 42 U.S.C. § 1988, and BIVENS.

Wherefore, Plaintiff request Judgement in his favor.

DATE: JANUARY 8, 2014

RESPECTFULLY SUBMITTED,


WHEELER ZAMICHEL I

PRAYER FOR RELIEF

38. Wherefore, Plaintiff pray that this court enter Judgement:

38. Declaring defendants, Andrews, Victor, and Dove liable for Civil monetary damages to Plaintiff, for violating his Rights guaranteed under the Fourth Amendment of the U.S. Constitution.
39. Declaring the City of Philadelphia liable as a Municipality, and award Plaintiff damages in the amount of \$500,000.
40. Granting Plaintiff compensatory damages against Victor and Andrews jointly and severally for \$250,000.
41. Granting Plaintiff punitive damages against Victor, Andrews, and Dove for 1,000,000, jointly and severally.
42. Declaring judgement against Federal Defendants, and granting an award of monetary compensatory damages, jointly and severally against all federal defendants for \$300,000.
43. Granting Plaintiff punitive damages against all federal defendants, jointly and severally, in the amount of 500,000.
44. Granting Plaintiff recovery of attorney's fees, expended defending the arrest/Civil Action, their cost with interest, against all DEFTS.

DATE: JANUARY 8, 2013

(18)

RESPECTFULLY SUBMITTED,

Wahneema Lubiano

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims that
can be tried.

DATE: JANUARY 8, 2014

RESPECTFULLY SUBMITTED,


WHEELER ZAMICHEL I

CERTIFICATE OF SERVICE

I hereby certify that, a true and correct copy of Plaintiff's Third Amended Complaint, has been served upon the persons listed below: and for EFC: **FILED**

FILED

JAN 10 2014

THIS SERVICE IS BY CERTIFIED MAIL _____
MICHAEL E. KUNZ, Clerk
BY _____, Dep. Clerk

MICHAEL E. FUNZ, Clerk
PAUL _____, Dep. Clerk

ADDRESSED TO:

MAIL RECEIPT #7008 3230 0001 5914 5493

UNITED STATES DISTRICT COURT
CLERK OF COURTS
601 MARKET STREET
U.S. COURTHOUSE
PHILA, PA. 19106

DIMITRIOS MAVROUDIS, SOLICITOR
CIVIL RIGHTS LAW DEPT.
1515 ARCH STREET 14th FL.
PHILA, PA. 19102-1595

DATE: JANUARY 8, 2014

RESPECTFULLY SUBMITTED,

WHEELER ZAMICHEL I

INST#67271-066

FDC PHILA

P.O. BOX 562

PHILA, PA. 19105

EXHIBITS

UNITED STATES OF AMERICA v. WHEELER ZAMICHELLE
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
2011 U.S. Dist. LEXIS 141610
CRIMINAL ACTION No. 11-393
December 9, 2011, Decided
December 9, 2011, Filed

Counsel For WHEELER ZAMICHELLE, A/K/A "TROY ZANICHELLE", Defendant:
MICHAEL K. PARLOW, LEAD ATTORNEY, GALLANT & PARLOW, BENSALEM, PA.
For USA, Plaintiff: VIRGINIA PAIGE PRATTER, DEPARTMENT
OF JUSTICE, PHILADELPHIA, PA.
Judges: Berle M. Schiller, J.

Opinion

Opinion by: Berle M. Schiller

Opinion

MEMORANDUM

Schiller, J.

In a one-count indictment, the Government charged Wheeler Zamichlell as a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Philadelphia police officers recovered the weapon underlying the charge during a traffic stop. Zamichlell now moves to suppress the gun that police found in the car he was driving, arguing that the officers' actions constituted an illegal search and seizure in violation of the Fourth Amendment. Zamichlell also seeks to suppress statements he made to the police after he was pulled over. The Court held a hearing on the motion on November 21, 2011. For the reasons that follow, the Court grants the motion.

I. BACKGROUND

At approximately 2:27 in the morning on February 20, 2011, Philadelphia Police Department Officers William Andrews and Melvin Victor were driving back to their district, having responded to several shootings in the adjacent district. (Nov. 21, 2011 Hr'g Tr. at 23-25, 45-46, 53.) At the intersection of Wister Street and West Nedro Avenue, the officers saw a red Chevrolet Impala speed through a stop sign and almost hit their patrol car. (*Id.* at 25, 46.) They turned on their lights and sirens and followed the Impala until it turned the wrong way on a one-way street and stopped. (*Id.* at 25, 46-47.) The officers testified that this was a normal traffic stop and that they were no longer searching for suspects in the shootings at the time. (*Id.* at 30, 53-54.)

Officer Andrews approached the Impala on the passenger side, Officer Victor on the driver side. (*Id.* at 26.) Officer Victor testified that the driver of the Impala, later identified as Zamichlell, turned on the interior dome light as the officers approached. (*Id.* at 47.) Zamichlell denied ever turning on the dome light. (*Id.* at 65.) Zamichlell turned and stuck his head out of the open window on the driver side, resting both arms on the window frame so that his body was facing Officer Victor, and asked why he had been pulled over. (*Id.* at 47-48.)

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Officer Andrews testified that he scanned the interior of the car as he approached, saw a .38 revolver sitting in plain view on the front passenger seat of the car, and yelled "Gun" to alert his partner. (*Id.* at 26, 47.) Officer Victor removed Zamichileli from the Impala, handcuffed him, and placed him in the back of the patrol car while Officer Andrews retrieved the firearm, which contained five spent shell casings. (*Id.* at 26, 49-50.) Officer Victor never saw where Officer Andrews found the gun. (*Id.* at 57-58.) Both officers testified that Zamichileli was cooperative at all times during the stop and did not make any suspicious or furtive movements. (*Id.* at 26, 36, 56.) The officers issued two citations for Zamichileli's traffic violations. (Gov't's Ex. 1; Nov. 21, 2011 Hr'g Tr. at 51-52.)

At the hearing, Zamichileli disputed Officer Andrews's claim that the gun was on the front passenger seat and testified that the gun was actually secreted under the front passenger seat. (*Id.* at 65, 70.) According to Zamichileli, the officers pulled him out of the car with guns drawn before conducting a search. (*Id.* at 64.) The defense introduced into evidence a picture of the Impala, allegedly taken the month before the traffic stop, showing that the car had tinted windows. (Def.'s Ex. 2; Nov. 21, 2011 Hr'g Tr. at 63.) Zamichileli also testified that the car doors and passenger-side window were closed when the officers approached. (*Id.* at 65.) Neither officer could remember whether the windows were tinted or whether the passenger-side window was up or down during the traffic stop. (*Id.* at 28-29, 38, 57-58.) Officer Victor confirmed that he did not ask for a driver's license, registration, or proof of insurance while Zamichileli was in the car. (*Id.* at 59-60.)

II. STANDARD OF REVIEW

The movant bears the burden of proving, by a preponderance of the evidence, that the evidence in question should be suppressed. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995) (citing *United States v. Acosta*, 965 F.2d 1248, 1256 n. 9 (3d Cir. 1992)). "However, once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable." *Johnson*, 63 F.3d at 245.

III. DISCUSSION

The initial traffic stop was lawful. "It is well-established that a traffic stop is lawful under the Fourth Amendment where a police officer observes a violation of the state traffic regulations." *United States v. Moorefield*, 111 F.3d 10, 12 (3d Cir. 1997). In this case, the officers observed Zamichileli speed through a stop sign and drive the wrong way down a one-way street, both traffic violations under Pennsylvania law. See 75 Pa. Cons. Stat. §§ 3323(b); 3308(b).

Nonetheless, Zamichileli argues that the search and seizure of the gun during the traffic stop violated his Fourth Amendment rights. Weighing the evidence presented, the Court finds the officers' version of the story implausible. There was no reason for Zamichileli to turn on the dome light when he had already opened the driver-side window to speak with Officer Victor and was not asked to provide his paperwork-nor is it likely that Zamichileli would do so with a gun sitting in plain view on the front passenger seat. Without the dome light on, it would be nearly impossible for Officer Andrews to see a gun on the front seat through a closed, tinted window in the dark of night. The Court therefore credits Zamichileli's testimony that the gun was under the front passenger seat. Because the gun was not in plain view, the only way for the officers to find it was to search the vehicle. Absent an applicable exception, the officers were not permitted to conduct a warrantless search of the Impala without probable cause to believe it contained evidence of criminal activity. See *United States v. Burton*, 288 F.3d 91, 100 (3d Cir. 2002). The Government has not met its burden of showing that the search was reasonable.

The Government argues that once Officer Andrews saw the gun in plain view, the officers had

EXHIBIT A

probable cause to arrest Zamichieli for carrying a firearm without a license and, as a result, they were authorized to conduct a search incident to the arrest. (Gov't's Opp. to Def.'s Mot. to Suppress Physical Evidence and Statements and Mot. in Limine Seeking Severance at 7.) "Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." *Wilson v. Russo*, 212 F.3d 781, 789 (3d Cir. 2000) (internal quotation marks omitted). The search of "a vehicle incident to a recent occupant's arrest" is lawful "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search," or "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 1719, 173 L. Ed. 2d 485 (2009). Zamichieli was not arrested for traffic violations, but rather for carrying a firearm without a license. Because the Court has found that the gun was not in plain view, the officers only had probable cause to arrest Zamichieli for an offense related to the gun after searching the vehicle. Therefore, the exception to the probable cause requirement for searches incident to arrest does not apply because there was no probable cause to arrest prior to the search. *See Knowles v. Iowa*, 525 U.S. 113, 118-19, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998) (holding that the exception does not apply when a police officer has probable cause to believe the defendant has committed a traffic offense but only issues a citation); *Smith v. Ohio*, 494 U.S. 541, 543, 110 S. Ct. 1288, 108 L. Ed. 2d 464 (1990) ("[The exception] does not permit the police to search any citizen without a warrant or probable cause so long as an arrest immediately follows.").

During a traffic stop, an officer is also entitled to "conduct a search of the passenger compartment, if he has a reasonable suspicion that the occupants might be armed and dangerous." *United States v. Bonner*, 363 F.3d 213, 216 (3d Cir. 2004) (citing *Michigan v. Long*, 463 U.S. 1032, 1049-50, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983)). "The court measures the reasonableness of the officer's suspicion by taking into account the totality of the circumstances." *United States v. Focareta*, 283 F. App'x 78, 83 (3d Cir. 2008) While the test is an objective one, "[t]he searching officer's subjective beliefs are part of the totality of the circumstances that the court examines when determining whether there was an objective basis" for the search. *Id.* at 84. Officers Andrews and Victor testified that this was a normal traffic stop and that Zamichieli was cooperative and made no suspicious or furtive movements. Without any objective basis to believe that Zamichieli was armed and dangerous, the officers lacked reasonable suspicion to search the Impala. Accordingly, this exception to the probable cause requirement is also inapplicable.

Because the search was conducted in violation of Zamichieli's Fourth Amendment rights, all evidence obtained in connection with the search, including the gun and any statements made by Zamichieli following the search, must be suppressed as fruit of the poisonous tree. *See Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

IV. CONCLUSION

The weapon underlying the charge against Zamichieli was obtained through an illegal search. As a result, the motion to suppress must be granted. An appropriate Order will be docketed separately.

ORDER

AND NOW, this 9th day of December, 2011, upon consideration of Defendant's Motion to Suppress Physical Evidence and Statements and the Government's responses thereto, following a hearing conducted on November 21, 2011, and for the reasons provided in this Court's Memorandum dated December 9, 2011, it is hereby **ORDERED** that the motion (Document No. 20) is **GRANTED**.

BY THE COURT:

lyccases

EXHIBIT A

/s/ Berle M. Schiller

Berle M. Schiller, J.

lyccases

4

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67271066

Philadelphia Police Department Arrest Report

Page 1 of 2 PARS

Defendant: last name: **ZANICIELI** Sex: **Male** SSN: **196-56-2110** DOB: **06/23/1972**
 first name: **TROY** middle initial: Race: **Black** Birth Place: **Philadelphia**
 Address: **605 ROBBINS AV Philadelphia PA 19111-0000** Phone #: **215-000-0000**
 Year: **2011** District: **35** DC#: **11-35-012559** Sector: **3** Ctrl#: **00000**
 PID: **0717642** SID: **20761636** OTN: **N7283286** Event: **220651955** CBN: **1039480**
 Crime Class: **1501** Desc: **Weapons (carrying, possession of) violation** Authority: **Philadelphia Police Department**
 DFJ: **N** uniform firearms act (adults) handgun FBI / FID:

Arrest Name: **WHEELER ZAMICIELI** DOB: **06/23/1971** SSN:

Address given to PPD: **605 ROBBINS AV Philadelphia PA 19100**

ARREST INFORMATION:

Date / Time: **02/20/2011 02:28AM** District: **35** Inside/Outside: **O** Arrest Type: **SA**
 1900 CHURCH LN Philadelphia PA 19100-
 Slatng Date: **02/20/2011** Slatng Time: **06:16AM** Sum/Warr: Issued By AC Magistrate:

OCCURRENCE:

Date / Time: **02/20/2001 02:27AM** Date reported: **02/20/2011 02:28AM** Inside/Outside: **O** Codefendants?: **N**
 N BEECHWOOD ST / CHURCH LN Philadelphia PA 19100-

FACTS OF THE CASE:

P/O VICTOR #5583 WAS INTERVIEWED AND STATED THAT WHILE WORKING WITH HIS PARTNER, P/O ANDREWS #3935 THEY WERE SURVEYING THE AREA AFTER A FOUNDED SHOOTING AT 2ND & LINTON STS. WHILE DOING SO, THE OFFICERS OBSERVED A CHEVY IMPALA TRAVELING AT A HIGH RATE OF SPEED IN THE AREA OF WISTER & NEDRO. P/O VICTOR STATED THAT THE OPERATOR OF THAT VEHICLE DISREGARDED A STOP SIGN AT THAT LOCATION AND AKMOST BROADSIDED THEIR MARKED POLICE VEHICLE. P/O VICTOR THEN STATED THAT THE OPERATOR CONTINUED TRAVELING ON WISTER AND THEN MADE A RIGHT ONTO CHURCH LN WHICH IS THE WRONG WAY ON A ONE WAY. THE OFFICERS WERE ABLE TO STOP THE VEHICLE AT BEECHWOOD & CHURCH LN. UPON APPROACHING THE VEHICLE, THE OPERATOR TRUNED ON HIS INTERIOR LIGHTS AND P/O ANDREWS OBSERVED A GUN ON THE PASSENGER SIDE AND IMMEDIATELY ALERTED HIS PARTNER. THE OPERATOR WAS REMOVED FROM THE VEHICLE AND A .38 CALIBER ROSSI REVOLVER WAS RECOVERED. THE GUN WAS LOADED WITH (5) "SPENT" FCC'S. THE OPERATOR WAS IDENTIFIED AS WHEELER T. ZAMICIELI, DOB 6-23-71. THE WEAPON WAS PLACED ON A PROPERTY RECEIPT AND THE DEFENDANT WAS TRANSPORTED TO HOMICIDE FOR PROCESSING.

CHARGES:

Code	OC	Description	Grade	Counts
CC6105		VUFA-FORMER CONVICT	F2	001
CC6106		VUFA-NO LICENSE	F3	001
CC6108		VUFA-ON STREETS	M1	001

REQUESTED HEARING DATE:

02/28/2011 00:00

REQUESTED HEARING LOCATION:

806 CJC: 1301 Filbert Street

COMPLAINANTS AND WITNESSES:

Complainant(s)

P/OFF VICTOR MELVIN, MELVII
 -- 14th Police District - Phila PA 00000-

Age: 99 Phone(H): 215-000-0000 Phone(W): - -

ARREST REPORT BY:

DOVE RONALD RONALD

Badge Description

8003 60 Homicide

Unit Id Platoon Squad Group Id

3 3 C

ARREST REPORT APPROVED BY:

Supervisor- payroll no:

Approval Code:

POLICE PERSONNEL:

Employee Name	Payroll Number	Badge	Dist/Unit	Platoon/Group	Vacation Dates	Vacation Description	Needed At Hearing Police/Sup	Arrest OFC.
DOVE RONALD RONALD		8003	60 / 3	3 C	07/14/2011 to 07/28/2011	Vacation	N / R	N
VICTOR MELVIN MELVIN		5583	14 / 0	3 E	02/22/2011 to 02/22/2011	Training	Y / R	Y
VICTOR MELVIN MELVIN				E	04/12/2011 to 04/22/2011	Vacation	Y / R	Y
VICTOR MELVIN MELVIN				E	11/06/2011 to 11/16/2011	Vacation	Y / R	Y
ANDREWS WILLIAM WILLIAM		3935		E	08/11/2011 to 08/25/2011	Vacation	Y / R	Y

ADDITIONAL INFORMATION:

Hits: Y

Statement?:

Lab User Fees Requested?: N

ADA Concerns?:

EXHIBIT C

First Judicial District of Pennsylvania

51CR00073562011

Troy Zanicheli

*Preliminary Hearing Volume 1
April 26, 2011*

CRS
Court Reporting System

*First Judicial District of Pennsylvania
100 South Broad Street, Second Floor
Philadelphia, PA 19110
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COMMONWEALTH VS ZANICHEL
[1] IN THE MUNICIPAL COURT OF PHILADELPHIA COUNTY
[2] CRIMINAL TRIAL DIVISION
[3] ---
[4] COMMONWEALTH : MC-51-CR-0007356-2011
[5] :
[6] vs. :
[7] TROY ZANICHEL :
[8] ---
[9] April 26, 2011
[10] Courtroom 803 - Criminal Justice Center
[11] Philadelphia, Pennsylvania
[12] ---
[13] B E F O R E: THE HONORABLE CHARLES HAYDEN, J.
[14] :
[15] ---
[16] PRELIMINARY HEARING
[17] :
[18] ---
[19] :
[20] :
[21] :
[22] :
[23] :
[24] :
[25]

COMMONWEALTH VS ZANICHEL
[1] APPEARANCES:
[2] GAURI GOPAL, ESQUIRE
Assistant District Attorney
[3] For the Commonwealth
[4] :
MICHAEL PARLOW, ESQUIRE
[5] Attorney for the Defendant
[6] :
[7] :
[8] :
[9] :
[10] :
[11] :
[12] :
[13] :
[14] :
[15] :
[16] :
[17] :
[18] :
[19] :
[20] :
[21] :
[22] :
[23] :
[24] :
[25]

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COMMONWEALTH VS ZANICHEL
[1] INDEX
[2] ---
[3] COMMONWEALTH'S EVIDENCE
[4] ---
[5] WITNESS: DR CR RDR RCR
[6] OFFICER ANDREWS 4 6
[7] :
[8] :
[9] :
[10] :
[11] :
[12] :
[13] :
[14] :
[15] :
[16] :
[17] :
[18] :
[19] :
[20] :
[21] :
[22] :
[23] :
[24] :
[25]

COMMONWEALTH VS ZANICHEL
[1] THE COURT CRIER: State your name,
[2] your badge number, district or division, and
[3] spell your last name for the record.
[4] THE WITNESS: Officer Andrews, Badge
[5] No. 3935, assigned to the 14th District.
[6] :
[7] OFFICER ANDREWS, having been duly
[8] sworn/affirmed, was examined and testified as
[9] follows:
[10] :
[11] THE COURT: This is a one witness
[12] case for the Commonwealth.
[13] MS. GOPAL: Yes, Your Honor.
[14] THE COURT: Sequestration is still
[15] in effect and that's mutual sequestration for
[16] any defense witness.
[17] MS. GOPAL: Thank, Your Honor.
[18] :
[19] COMMONWEALTH'S EVIDENCE
[20] :
[21] DIRECT EXAMINATION
[22] :
[23] BY MS. GOPAL:
[24] Q. Good morning, officer.
[25] A. Good morning.

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COMMONWEALTH VS ZANICHEL

- [1] the objection.
[2] BY MR. PARLOW:
[3] Q. Did you walk up to his car while he parked?
[4] MS. GOPAL: Objection, Your Honor.
[5] THE COURT: Overruled. We got to
[6] get to the point where he sees the gun.
[7] THE WITNESS: The vehicle was
[8] already pulled over for violation. We
[9] approached the vehicle. Upon me approaching
[10] on the passenger side, I observed in plain
[11] view at 38 revolver under the passenger seat.
[12] BY MR. PARLOW:
[13] Q. What color was it?
[14] A. Black.
[15] Q. And where exactly -- what part of the gun was
[16] in plain view in your opinion?
[17] A. The entire gun.
[18] Q. Was it by his feet?
[19] A. It was on the passenger seat, sir.
[20] Q. Oh, it was on the passenger seat?
[21] A. Yes, sir.
[22] Q. What kind of car was he operating?
[23] A. Red Impala.
[24] Q. Now, prior to observing the gun, did your
[25] partner or yourself pull out your gun to stop him?

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COMMONWEALTH VS ZANICHEL

- [1] reach towards any part of the car?
[2] A. No.
[3] Q. Was there anything else on the passenger side
[4] seat?
[5] A. Not that I recall.
[6] Q. Any papers? Books?
[7] MS. GOPAL: Objection, Your Honor.
[8] THE COURT: Overruled. I'll allow
[9] it.
[10] THE WITNESS: Not that I recall.
[11] BY MR. PARLOW:
[12] Q. Were there cars parked along the sides of the
[13] street?
[14] MS. GOPAL: Objection, Your Honor.
[15] THE COURT: Overruled. Goes to
[16] ability to remember.
[17] THE WITNESS: I don't think so.
[18] BY MR. PARLOW:
[19] Q. Did either one of you, meaning yourself or
[20] your partner, call in when you're pulling the
[21] vehicle over?
[22] MS. GOPAL: Objection, Your Honor.
[23] THE COURT: Sustained.
[24] THE WITNESS: Yes.
[25] THE COURT: You don't have to

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COMMONWEALTH VS ZANICHEL

- [1] MS. GOPAL: Objection, Your Honor.
[2] THE COURT: Sustained.
[3] THE WITNESS: No.
[4] THE COURT: Sustained.
[5] BY MR. PARLOW:
[6] Q. And who recognized or who observed the gun
[7] first? Yourself or your partner?
[8] A. I did. I was on the passenger side.
[9] Q. What did you do as soon as you saw the gun?
[10] A. I announced gun. And then immediately
[11] recovered the gun while my partner recovered the
[12] driver for our safety.
[13] Q. Did my client make any sudden movements?
[14] A. No.
[15] MS. GOPAL: Objection, Your Honor,
[16] relevance.
[17] THE COURT: Overruled.
[18] BY MR. PARLOW:
[19] Q. Did he reach for the gun at all?
[20] A. Not towards the gun.
[21] Q. Did he reach anywhere else?
[22] A. No, my partner had his gun pointed at him at
[23] that point.
[24] Q. Well, prior to your partner pulling the gun
[25] and prior to you yelling gun, did you see my client

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COMMONWEALTH VS ZANICHEL

- [1] answer.
[2] MS. GOPAL: Move to strike.
[3] THE COURT: Stricken.
[4] BY MR. PARLOW:
[5] Q. Were you positioned in a stationary position
[6] in your vehicle when you first observed my client
[7] going down the street or were you actually driving
[8] the vehicle?
[9] A. We were driving at that point.
[10] Q. What street were you driving on?
[11] MS. GOPAL: Objection, Your Honor.
[12] THE COURT: Sustained.
[13] BY MR. PARLOW:
[14] Q. Do you recall what my client was wearing?
[15] MS. GOPAL: Objection, Your Honor.
[16] THE COURT: Overruled, if he
[17] remembers.
[18] THE WITNESS: No.
[19] BY MR. PARLOW:
[20] Q. Did he give you a hard time at all?
[21] A. No, sir.
[22] Q. Did you recover anything else from his person
[23] upon the search?
[24] A. Not that I recall.
[25] Q. And did you place my client under arrest or

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COMMONWEALTH VS ZANICHEL

- [1] did you partner?
[2] MS. GOPAL: Objection, Your Honor,
[3] relevance.
[4] THE COURT: Overruled, if you
[5] remembers.
[6] THE WITNESS: I believe my partner
[7] placed him in custody because he exited the
[8] driver's side.
[9] BY MR. PARLOW:
[10] Q. Meaning my client exited the driver's side?
[11] A. Yes.
[12] Q. What kind of car did you say it was again?
[13] MS. GOPAL: Objection, asked and
[14] answered.
[15] THE COURT: Overruled.
[16] THE WITNESS: It's a red Impala.
[17] BY MR. PARLOW:
[18] Q. Did it have bucket seats or bench seats?
[19] MS. GOPAL: Objection.
[20] THE COURT: Overruled, I'll allow
[21] it.
[22] THE WITNESS: I can't recall.
[23] BY MR. PARLOW:
[24] Q. Did you ask him at any time to put his windows
[25] down?

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COMMONWEALTH VS ZANICHEL

- [1] MS. GOPAL: Objection, Your Honor.
[2] THE COURT: Sustained.
[3] BY MR. PARLOW:
[4] Q. When you approached the car, can you judge the
[5] conditions of the windows?
[6] MS. GOPAL: Objection, Your Honor.
[7] THE COURT: Sustained.
[8] BY MR. PARLOW:
[9] Q. Did you see the gun through an open door or a
[10] closed door?
[11] A. Door was closed, sir.
[12] Q. Was the window up?
[13] MS. GOPAL: Objection, Your Honor.
[14] MR. PARLOW: Judge, it goes to his
[15] ability to recall what happened with his
[16] observations.
[17] THE COURT: Overruled. I'll allow
[18] it. Go ahead.
[19] THE WITNESS: I cannot tell you
[20] whether the window was up or down, but it was
[21] right there in the front seat and the door was
[22] closed.
[23] BY MR. PARLOW:
[24] Q. Did you prepare a report in the case?
[25] MS. GOPAL: Objection, Your Honor.

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COMMONWEALTH VS ZANICHEL

- [1] THE COURT: Sustained.
[2] BY MR. PARLOW:
[3] Q. Do you recall your partner saying whether my
[4] client put his windows down or not?
[5] MS. GOPAL: Objection, Your Honor.
[6] THE COURT: Sustained.
[7] MR. PARLOW: That's all the
[8] questions I have.
[9] THE COURT: Anything else?
[10] MS. GOPAL: Nothing further, Your
[11] Honor.
[12] THE COURT: You may step down.
[13] ---
[14] (Witness excused.)
[15] ---
[16] MS. GOPAL: And at this time the
[17] Commonwealth would mark and move the criminal
[18] extract of the defendant showing a prior
[19] conviction for possession --
[20] MR. PARLOW: Judge, I would
[21] stipulate that he as a conviction that put the
[22] status of the current charges where Your Honor
[23] could possibly hold him for court. As far
[24] what that was, I'll agree that it was a charge
[25] making him ineligible.

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COMMONWEALTH VS ZANICHEL

- [1] THE COURT: Are you willing to
[2] accept that stipulation?
[3] MS. GOPAL: Yes, Your Honor. And
[4] that would make him ineligible to carry a
[5] firearm in the city and county of Philadelphia
[6] and with that Your Honor the Commonwealth.
[7] With that, Your Honor, the
[8] Commonwealth would rest for purposes of the
[9] preliminary hearing.
[10] ---
[11] (Whereupon, argument was held off of
[12] the record.)
[13] ---
[14] THE COURT: I'm satisfied that for
[15] the prima facie case, that's presented today,
[16] I'm satisfying they met their burden.
[17] Therefore, I'm going to hold your
[18] client.
[19] Your arraignment date is May 17th,
[20] 2011, Courtroom 1101 at 11 o'clock a.m.
[21] ---
[22] (Hearing concluded.)
[23]
[24]
[25]

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COMMONWEALTH VS ZANICIELI
CERTIFICATION

I hereby certify that the
proceedings and evidence are contained fully
and accurately in the notes taken by me on the
trial of the above cause, and that this copy
is a correct transcript of the same.

Melissa Weidenmiller
Official Court Reporter

(The foregoing certification
of this transcript does not apply to any
reproduction of the same by any means unless
under the direct control and/or supervision
of the certifying reporter.)

Court Reporting System (Generated 2011/08/22 15:59:12)

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

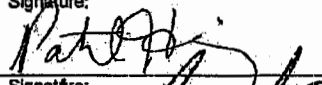
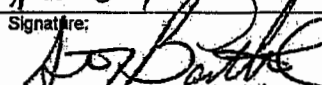
Title of Investigation: ZAMICIELI, Wheeler T.	Investigation Number: 766075-11-0015	Report Number: 2
--	---	---------------------

SUMMARY OF EVENT:

RESTORATION OF FIREARMS PRIVILEGES: ATF Special Agent Patrick Henning contacted the ATF Firearms Trafficking Division and the Pennsylvania Board of Pardons to determine if Wheeler ZAMICIELI had his firearms privileges restored.

NARRATIVE:

- On February 25, 2011, Stephanie Forbes, Program Assistant with the ATF Firearms Trafficking Division, advised Agent Henning that ZAMICIELI has not received relief from his federal firearms disabilities.
- On February 28, 2011, Jennifer Glass, Administrative Officer for the Pennsylvania Board of Pardons, advised Agent Henning that ZAMICIELI has not applied for pardons for his felony convictions.

Prepared by: Patrick J. Henning	Title: Special Agent, Philadelphia VI Field Office	Signature: 	Date: 2/28/11
Authorized by: Steven L. Bartholomew	Title: Acting Group Supervisor, Philadelphia VI Field Office	Signature: 	Date: 2/28/11
Second level reviewer (optional): Mark W. Potter	Title: Special Agent in Charge, Philadelphia Field Division	Signature:	Date:

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

Title of Investigation: ZAMICHIEMI, Wheeler T.	Investigation Number: 766075-11-0015	Report Number: 3
---	---	---------------------

SUMMARY OF EVENT:

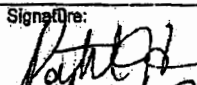
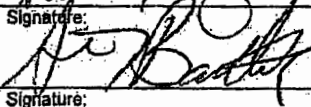

FINGERPRINT COMPARISON: On March 31, 2011, Philadelphia Police Department Fingerprint Technician Donna Russell examined and compared fingerprint cards from arrests of Wheeler ZAMICHIEMI.

NARRATIVE:

1. On the above date, Technician Russell examined and compared fingerprint cards related to the arrests of Wheeler ZAMICHIEMI on or about 02/20/11, 03/25/94, 03/23/93, and 10/26/88. Technician Russell determined that all four sets of fingerprints belong to one and the same individual.

ATTACHMENTS:

Pennsylvania State Police fingerprint card, arrest date 02/20/11
Fingerprint card, arrest date 03/25/94
Fingerprint card, arrest date 03/23/93
Fingerprint card, arrest date 10/26/88

Prepared by: Patrick J. Henning	Title: Special Agent, Philadelphia VI Field Office	Signature: 	Date: 3/31/11
Authorized by: Steven L. Bartholomew	Title: Acting Group Supervisor, Philadelphia VI Field Office	Signature: 	Date: 3/31/11
Second level reviewer (optional): Mark W. Potter	Title: Special Agent in Charge, Philadelphia Field Division	Signature: 	Date: 3/31/11

1 A. No.

2 Q. All right. And you went there for the sole
3 purpose of taking pictures, right?

4 A. Correct, because I knew there might be a trial
5 in this case.

6 Q. And you were taking pictures of all angles of
7 the car, right?

8 A. A few angles.

9 Q. All right. So you didn't know what angle you
10 would want or not want, correct?

11 A. I -- I think I took a picture from almost every
12 side.

13 Q. All right. You -- and since you didn't know
14 how the car was parked, you had the keys with you
15 so -- if you had to move it so you could take
16 pictures in certain angles?

17 A. No. I had no intention of going into that car
18 at any point.

19 Q. So if there was a -- a problem with one of the
20 pictures you wanted to take because the car was
21 parked in a certain way, you wouldn't have moved the
22 car?

23 A. That didn't even -- even enter into my
24 thinking, about how the car might have been parked
25 out there. I just went out there hoping to find it

GOVERNMENT
EXHIBIT
2B

EXHIBIT 6

